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Clapp Peterson Tiemessen Thorsness & Johnson LLC  
CPTTJ File# 4302-13 Date Rec'd 10/17/19  
Date Served 10/17 Response Due PER 84 11/18  
Scanned Distribution JBT, THP, KAL  
CORR\_ PLDG\_ DISC\_ WIT\_ REC\_ BE\_ OTH\_

5 ATTORNEY FOR PLAINTIFFS  
6 Matthew and Nancy Borgman

7 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
8  
9 THIRD JUDICIAL DISTRICT AT ANCHORAGE

9 MATTHEW BORGMAN, and  
10 NANCY BORGMAN,

10 Plaintiffs,

11 -vs-

12 YAMAHA MOTOR  
13 CORPORATION, USA.

14 Defendant.

Case No. 3AN-19-\_\_\_\_\_ CI

15 COMPLAINT

16 COMES NOW the Plaintiffs Matthew and Nancy Borgman through their attorney,  
17 Daniel I. Pace of the Pace Law Offices, and alleges the following as their complaint:

18 JURISDICTIONAL ALLEGATIONS

19 1. At all times relevant herein, Plaintiff Matthew Borgman was a resident  
20 within the State of Alaska, Third Judicial District.

21 2. At all times relevant herein, Plaintiff Nancy Borgman was a resident within  
the State of Alaska, Third Judicial District.

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3. At all times relevant herein, Defendant Yamaha Motor Corp., USA ("Yamaha") was a corporation formed under the laws of the State of California, a "manufacturer" as defined under AS 45.27.390(6), and selling marine and motorized recreational products in the State of Alaska through authorized dealers.

4. The Superior Court has jurisdiction over this action pursuant to AS 22.10.020 as Plaintiffs are seeking a recovery of money damages in excess of \$100,000.00, exclusive of costs, interest, and attorney fees.

5. Venue is proper in the Third Judicial District pursuant to AS 22.10.030 and Alaska Rule of Civil Procedure 3(c) as the claims arose in this judicial district

## GENERAL ALLEGATIONS

6. Plaintiffs purchased a 2018 Yamaha boat model number RP1800A-TAP, #US-YAMC0369H718 ("Boat") from Yamaha through its authorized dealer

7. The Boat is a "marine product" as defined by AS 45.27.390(7) and had a manufacturer's "warranty" as defined by AS 45.27.390(13) from Yamaha.

**8. The Boat did not conform to the warranty.**

9. Plaintiffs reported the nonconformities to the manufacture's authorized dealer during the term of the warranty.

10. The manufacturer or its authorized dealer did not make the necessary repairs to conform the Boat to the warranty during the warranty term after a reasonable number of attempts.

11. Plaintiffs requested a refund of the purchase price of the Boat under AS 45.27.190 by giving written notice by certified mail pursuant to AS 45.27.200 to Yamaha

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1 and its authorized dealer before 60 days had elapsed of the termination of the warranty  
2 period.

3 12. After Yamaha received the written request for a refund of the Boat, Yamaha  
4 failed to conform the Boat to the warranty within 30 days of receipt of said written request.

5 13. After Yamaha received the written request for a refund of the Boat, Yamaha  
6 failed to issue Plaintiffs a refund of the purchase price of the Boat within 60 days after the  
7 mailing of the written request.

8 14. As of today's date, the Boat is still out of use because Yamaha has failed to  
9 make the necessary repairs.

10 15. Yamaha has intentionally, with reckless disregard, and/or negligently failed  
11 to conform the Boat to the warranty.

12 16. Defendant's conduct has caused Plaintiffs emotional distress and economic  
13 damages.

#### 14 **COUNT I**

#### 15 **Violation of Alaska's Unfair Trade Practice Act, AS 45.50.471(b)(56)**

16 17. Previous paragraphs are incorporated herein.

17 18. Yamaha engaged in an unfair or deceptive act or practice when Yamaha  
18 failed to refund Plaintiffs the purchase price of the Boat.

19 19. The act or practice occurred in the conduct of trade or commerce.

20 20. Plaintiffs suffered an ascertainable loss of money or property as a result of  
21 the deceptive or unfair act or practice.

#### **PACE**

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#### **Complaint**

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**COUNT II**  
**Violation of Alaska's Unfair Trade Practice Act, AS 45.50.471**

21. Previous paragraphs are incorporated herein.

22. Defendant engaged in an unfair or deceptive act or practice when Yamaha failed to make the necessary repairs to conform Plaintiffs' Boat to the warranty.

23. The act or practice occurred in the conduct of trade or commerce.

24. Plaintiffs suffered an ascertainable loss of money or property as a result of the deceptive or unfair act or practice.

**PRAYER FOR RELIEF**

Wherefore, the Plaintiffs Matthew and Nancy Borgman requests they be awarded the following relief:

1. An award of special and general damages in an amount to be proven at trial.
2. An award of statutory damages in an amount to be proven at trial.
3. An award of prejudgment interest, post judgment interest, costs and up to and including full reasonable attorney's fees incurred in bringing this action.
4. An award of punitive damages based on the outrageous, wanton, willful, and intentional conduct of Defendant.

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1           5.     Any additional relief, including equitable relief, the Court deems appropriate  
2 under the circumstances.

3                     DATED this 4<sup>th</sup> day of October, 2019, at Anchorage, Alaska.

4                             **PACE LAW OFFICES**

5                             Attorney for Plaintiffs

6                             Matthew and Nancy Borgman



7                             Daniel I. Pace

8                             Alaska Bar No. 1305008

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IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA  
AT ANCHORAGE

Matthew Borgman, and  
Nancy Borgman,

Plaintiff(s),

vs.

Yamaha Motor Corporation, USA,

Defendant(s).

CASE NO. 3AN-19-10398 CI

**SUMMONS AND  
NOTICE TO BOTH PARTIES  
OF JUDICIAL ASSIGNMENT**

To Defendant: Yamaha Motor Corporation, USA

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at 825 W. 4th Ave., Anchorage, Alaska 99501 within 20 days\* after the day you receive this summons. In addition, a copy of your answer must be sent to the plaintiff's attorney or plaintiff (if unrepresented) Daniel Pace, whose address is:

Pace Law Offices, 101 E 9th Ave., Ste 7A, Anchorage, AK 99501

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

If you are not represented by an attorney, you must inform the court and all other parties in this case, in writing, of your current mailing address and any future changes to your mailing address and telephone number. You may use court form *Notice of Change of Address / Telephone Number* (TF-955), available at the clerk's office or on the court system's website at <https://public.courts.alaska.gov/web/forms/docs/tf-955.pdf> to inform the court. - OR - If you have an attorney, the attorney must comply with Alaska R. Civ. P. 5(i).

**NOTICE OF JUDICIAL ASSIGNMENT**

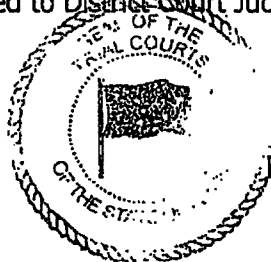
TO: Plaintiff and Defendant

You are hereby given notice that:

- ☒ This case has been assigned to Superior Court Judge Ramgren and to a magistrate judge.
- ☐ This case has been assigned to District Court Judge \_\_\_\_\_.

CLERK OF COURT

10/4/2019  
Date



By:

Allen Leilet  
Deputy Clerk

I certify that on 10/4/19 a copy of this Summons was ☐ mailed ☒ given to ☒ plaintiff ☐ plaintiff's counsel along with a copy of the ☐ Domestic Relations Procedural Order ☐ Civil Pre-Trial Order to serve on the defendant with the summons.

Deputy Clerk AC

\* The State or a state officer or agency named as a defendant has 40 days to file its answer. If you have been served with this summons outside the United States, you also have 40 days to file your answer.

CIV-100 ANCH (10/17)(cs)

Civil Rules 4, 5, 12, 42(c), 55

SUMMONS



## Notice of Service of Process

Transmittal Number: 20515973  
Date Processed: 10/09/2019

**Primary Contact:** Mike Grbic  
Yamaha Motor Corporation, U.S.A.  
6555 Katella Ave  
Tax Department  
Cypress, CA 90630-5101

**Electronic copy provided to:** Gaby Aragon  
Mary Nakamura  
Anne Pope

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<b>Entity:</b>	Yamaha Motor Corporation, U.S.A. Entity ID Number 0636874
<b>Entity Served:</b>	Yamaha Motor Corporation, USA
<b>Title of Action:</b>	Matthew Borgman vs. Yamaha Motor Corporation, USA
<b>Document(s) Type:</b>	OTHER: Summons, Notice and Complaint
<b>Nature of Action:</b>	Breach of Warranty
<b>Court/Agency:</b>	Anchorage Superior Court, AK
<b>Case/Reference No:</b>	3AN-19-10398CI
<b>Jurisdiction Served:</b>	Alaska
<b>Date Served on CSC:</b>	10/07/2019
<b>Answer or Appearance Due:</b>	20 Days
<b>Originally Served On:</b>	CSC
<b>How Served:</b>	Certified Mail
<b>Sender Information:</b>	Daniel I. Pace 907-222-4003

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Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC  
251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | [sop@cscglobal.com](mailto:sop@cscglobal.com)

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